

## APPEAL NO. 93243

This appeal arises under the Texas Workers' Compensation Act of 1989, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). On February 18, 1993, a contested case hearing was held in (city), Texas, with Patrice Fleming-Squirewell presiding as hearing officer. The hearing officer determined that claimant, who is the appellant in this case, did not sustain a compensable injury on (date of injury), while employed by (employer).

The claimant appeals this determination of the hearing officer, arguing that the witness against him lied and that he was injured as he stated. The carrier responds that the appeal was not timely filed, and that the decision should be upheld if the Appeals Panel determines that it was.

## DECISION

Finding that appellant's request for review was not timely filed, the decision of the hearing officer is has become final by operation of law.

The 1989 Act, Article 8308-6.41(a) (1989 Act) provides in part as follows:

"A party that desires to appeal the decision of the hearing officer shall file a written appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings and shall on the same date serve a copy of the request on the other party . . . ."

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(a)(3) (TWCC Rules) provides that a request for review of the hearing officer's decision shall be filed with the Commission's central office in Austin "not later than the 15th day after receipt of the hearing officer's decision; . . . ." Rule 143.3(c) goes on to provide the following:

"(c)A request made under this section shall be presumed to be timely filed or timely served if it is:

- (1)mailed on or before the 15th day after the date of receipt of the hearing officer's decision, as provided in subsection (a) of this section; and
- (2)received by the commission or other party not later than the 20th day after the date of receipt of the hearing officer's decision."

No court has yet reviewed the 15-day appeal time requirement of Article 8308-6.41 (1989 Act). However, cases concerning appeals from the former Industrial Accident Board,

as provided for by Section 5 of Article 8307 of the Texas Revised Civil Statutes Annotated (Vernon Supp. 1990), treated such limits as jurisdictional. Texas Workers' Compensation Commission Appeal No. 91070 (Docket No. DA-00009-91-CC-1), decided December 19, 1991. See also Taylor v. Argonaut Southwest Ins. Co., 817 S.W.2d 722, 723 (Tex. App.-Amarillo 1991, writ granted, order withdrawn; writ den'd) which held that the time limits provision of Section 5 of Article 8307, *supra*, "is mandatory and jurisdictional to a review of the Board's action . . . ."

Claimant's appeal indicates that he received the hearing officer's decision on March 4, 1993. His appeal is postmarked March 29, 1993, and was received by the commission on March 31, 1993.

Appellant was required to file his appeal not later than 15 days from March 4, that is, by March 19, 1993. Because his appeal was not mailed until March 29th, it is too late for it to be considered, and the hearing officer's decision has become final.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Joe Sebesta  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge